

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1517 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

VIJAY JIVRAM PATEL

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Appearance:

MR HARDIK RAVAL for Petitioner

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/97

ORAL JUDGEMENT

#. Heard learned counsel for the petitioner and perused the Special Civil Application.

#. Challenge is made by petitioner to the award of the Labour Court, Navsari, under which the respondent was ordered to be reinstated back in service with 50% backwages.

#. The misconduct alleged against the respondent, a driver of the petitioner-Corporation, was that he had driven the bus while on duty in such a rash and negligent manner that the bus had dashed with another bus which was coming from the other side, as a result of which accident had occurred.

#. The Labour Court, Navsari, has found that the respondent-driver has acted, on the contrary, with all vigilance, otherwise the accident would have resulted in more serious consequence, then as in the accident only 18 persons were injured. Taking into consideration the totality of the facts of the case, the Labour Court has come to the conclusion that the penalty of dismissal given to the respondent was not justified.

#. The learned counsel for the petitioner is unable to point out any error apparent on the face of the award of the Labour Court. However, much emphasis has been laid by the learned counsel for the petitioner on the part of the award where 50% backwages were awarded to the respondent-workman. The contention is that the Labour Court has awarded 50% backwages after taking into consideration the fact that it is difficult to believe that the respondent would not have got engaged in employment elsewhere during this period and when this fact has been accepted the Labour Court could not have awarded the backwages. It has further been contended that the workman has taken a long period of three years in raising the industrial dispute and as such, for this period the backwages should not have been awarded.

#. It is not the case where the Labour Court has given finding that the respondent-workman was in gainful employment during the period of his dismissal. Whatever the Labour Court has stated, is stated in context of not granting 100% backwages to the respondent-workman. The learned counsel for the petitioner very fairly admitted that the Corporation has not raised any plea of gainful employment of the respondent during the dismissal period. The burden to prove that the workman was in gainful employment during the period of dismissal lies on the Corporation and in absence of that plea, the Labour Court has not committed any error in awarding 50% backwages to the workman. The Labour Court has acted fairly and reasonable as 50% backwages have been deducted as it felt that it is difficult to believe that for all the time, the respondent-workman would not have got any job. The impugned award does not suffer from any illegality and it cannot be said to be perverse on the face of it.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court, stands vacated. No order as to costs.

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(sunil)